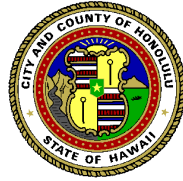


**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL
MAYOR



JAN K. YAMANE
EXECUTIVE DIRECTOR
AND LEGAL COUNSEL

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**

Date and Place: February 21, 2018
Kapālama Hale
1st Floor Conference Room
925 Dillingham Boulevard
Honolulu, Hawai'i 96817

Present: Hon. Victoria Marks (ret.), Chair
Michael Lilly, Esq., Vice Chair

Peter S. Adler, Commissioner
David B. Monk, Commissioner

Jan K. Yamane, Executive Director and Legal Counsel
Laurie Wong-Nowinski, Associate Legal Counsel
Janice Yonamine, Investigator
Kristine Bigornia (TA), Legal Clerk III

Moana Yost, Deputy Corporation Counsel,
Department of the Corporation Counsel (COR)

Absent: Hon. Riki Amano (ret.), Commissioner
Lynette Lo Kanda, Commissioner
Hon. Allene Suemori (ret.), Commissioner

MINUTES OF THE ETHICS COMMISSION MEETING

I. Call to Order, Public Notice, Quorum

Chair Marks called the meeting to order at 11:32 a.m., stating that all Commissioners were present except for Commissioners Amano, Kanda and Suemori. Chair Marks declared quorum.

II. New Business

A. Chair's Report

1. Announcements, Introductions, Correspondence, and Additional Distribution
2. For Action: Approval of Open Session Minutes of January 17, 2018

Commissioner Monk made and Commissioner Adler seconded a motion to approve the open session minutes of January 17, 2018. The motion carried unanimously.

3. For Action: Approval of Executive Session Minutes of January 17, 2018
The Commission may convene an executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), to consult with the Commission's attorneys regarding questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.

Commissioner Adler made and Commissioner Monk seconded a motion to approve the executive session minutes of January 17, 2018. The motion carried unanimously.

Chair Marks stated that she found one (1) typo on page two (2), second paragraph; the word "find." Chair Marks believed the word was supposed to be "fine."

Chair Marks confirmed with the exception of that typo, the motion had been made and seconded, and confirmed that the motion carried unanimously.

Commissioner Adler made and Commissioner Monk seconded a motion to move into executive session. The motion carried unanimously.

*****AGENDA ITEMS TAKEN OUT OF ORDER*****

III.D. For Action: Request for a Motion to Approve and Adopt Settlement After Notice of Alleged Violation of RCH Sec. 11-104 Against a City Employee

At 11:42 a.m. Commissioner Monk made and Commissioner Adler seconded a motion to go out of executive session to return to open session. The motion carried unanimously.

Chair Marks reported that for Executive Session item III.D, the Commission approved the recommendation regarding the settlement with the City Employee.

B. Executive Director and Legal Counsel's Report

1. Staff Work Reports Summary

The EDLC stated the staff added a part-time Senior Clerk Typist, who was last

year's Po'okela Fellow. He works twice a week for four (4) hours on each day.

The EDLC pointed out that the Legal Clerk I is carrying most Legal Clerk III responsibilities.

The EDLC noted that the archived scanned documents are now being shredded. The EDLC thanked the Legal Clerk I for managing everything.

The EDLC described the Investigator's chart showing training at a minimum. The EDLC explained that the Investigator's administrative time is spent in case status and staff meetings.

The EDLC explained that the ALC is also focusing much of her time on complaints, and noted an error on the heading for slide number 11. The EDLC explained that the work report is from January to February 2018. The EDLC also explained that the ALC's education and outreach is very small, largely because the Legal Clerk I is handling most day-to-day training issues.

2. Statistics
 - a. Website Sessions, January 2018 - 551
 - b. Financial Disclosure Filings – Update

The EDLC explained that the Clerk's office takes in the public financial disclosures and a copy is remitted to staff for review. The EDLC explained that confidential financial disclosures (both EForms and PDF forms) are filed with staff. In total, approximately 600 forms have come in via the City Clerk's office, E-forms and the PDF forms.

The EDLC stated that staff will send a memo to Council Chair and to the Managing Director's Office to follow-up on delinquencies.

- c. Lobbyist Registrations, Annual Reports – Update

The EDLC stated that the lobbyist registration process is not yet complete. The EDLC explained that there is no lobbyist database.

Vice Chair Lilly asked what happens if a person is a lobbyist and does not file. The EDLC stated that lobbyists are encouraged to file. The EDLC pointed out that annual reports were received from people who have not registered and vice versa. The EDLC stated that such people are being contacted now.

The ALC added that the Ethics Commission has the power to revoke or suspend their certificate of lobbying and that would be the only mechanism for failure to file proper forms. Vice Chair Lilly asked what happens if they do not have one or if they are lobbying without a certificate. The ALC responded that all that could be done was in the prospective.

Commissioner Adler asked to clarify that the system is a complaint based system, to which the ALC confirmed. Vice Chair Lilly asked if there is something that can be enacted by rule to change the penalties for failure to file the proper forms, to which the ALC stated that the ordinances would have to be changed.

Vice Chair Lilly asked if the law is not broad enough to “catch” those who are not filing or registering and whether the Ethics Commission has jurisdiction over lobbyists who are not registered.

The ALC responded that the Ethics Commission does have jurisdiction; however, all it can do is suspend or revoke. Vice Chair Lilly suggested that the Ethics Commission needs something with “teeth.”

Commissioner Adler asked if there was any sense of how these filings or registrations compare with the state. The EDLC responded that she has not done the comparison, but believes that the number of lobbyists is much larger for the state.

Commissioner Adler mentioned that the Commission had talked about starting a conversation with the State Ethics Commission to converge the registrations so that they are simultaneous.

The EDLC stated that she has reached out to the state. Impediments include resources and a database. The EDLC reminded the Commission that the state has a database for lobbyists. In addition, Campaign Spending has a database for its work.

The EDLC stated that she reached out to State Ethics and Campaign Spending about a shared database. In the meantime, the EDLC stated that she is drafting a bill. The EDLC stated that she did not know if it would be an omnibus bill or if the bill would contain more technical changes.

Chair Marks wondered if there was a way to say “if you are registered with the state, you are registered with the city.” Vice Chair Lilly asked for clarification that if registered with the state, if the city would have access to that list, to which the EDLC confirmed.

Vice Chair Lilly asked to clarify that only those who do not lobby for the state and only lobby to the city, have to register separately with the Honolulu Ethics Commission.

Chair Marks brought up that the city would have to get the state to agree. The EDLC stated that the categories that they would lobby at the state and the city would be different. Therefore, some form of notice from the lobbyist to the Honolulu Ethics Commission that these are the areas that they are lobbying on would still be required.

Vice Chair Lilly likened it to filing an Equal Employment Opportunity complaint or Civil Rights complaint with the state; which he described as automatic dual filing.

Vice Chair Lilly stated that you would be automatically filed with both federal and state and that separate complaints would not have to be filed.

3. Budget

- a. FY2018 Operating Budget – None
- b. FY2019 Operating Budget Request – Update

This year's budget includes salary increases for the EDLC and the ALC as determined by the Commission. The EDLC stated that the budget also included attendance at one conference, a laptop, and monies for consultant procurement in the event of conflict.

4. Education and Outreach

- a. Ethics Training Program – Update

The ALC reported deployment of the ethics training course DVDs to the various large departments for blue collar employees who do not have email or domain access.

The ALC also reported on feedback from the Equal Opportunity Office (EOO). The EDLC reminded the Commission that the EOO does training "all the time." The ALC stated that the EOO employee liked the training and especially liked the slides featuring clips from the television show "Parks and Recreation," in addition to the slide featuring Lance Armstrong. The employee thought these clips were very effective.

The ALC also received a comment from another City employee who stated that the Ethics course was great and thanked staff for making it a requirement. The employee also complimented everyone who was involved in preparing the material, stating that it was "fresh, current and applicable to all of us, every day."

Commissioner Adler suggested putting the comments and feedback into a separate file.

The ALC went on to state that the staff is trying to go back into social media. The ALC is using Twitter and reported having sent out eight (8) "tweets."

The Commissioners had a discussion regarding the number of tweets that are appropriate and questioned who would be receiving such information.

Commissioner Monk asked about "followers," to which the ALC responded that there are 23. The ALC stated that the State Ethics Commission has 500 followers; however, they have been using Twitter as a platform for a lot longer and have approximately 100-200 tweets.

The ALC stated that she tweeted about today's Ethics Commission meeting, with the address and a link for more information. The link directs a person to the Commission's website.

The ALC also tweets ethics news articles. Staff is avoiding overtly political articles, however.

The ALC encouraged Commissioners to “follow” the Honolulu Ethics Commission. The ALC summarized that Twitter is the staff’s new outreach method and added that the newsletters will be pushed out through Twitter, as well.

5. Audit – None

6. Legislation – Update

The EDLC included in the materials, House Bill (HB) 71, House Draft (HD) 1. This bill is regarding governors and mayors not having second jobs while in office.

Vice Chair Lilly stated that the Ethics Commission is the enforcement arm and that it is not the job of the Commission to weigh in on the propriety of a particular proposal.

Commissioner Adler expressed interest in hearing any perceptions of the other “fall out” from the mayor’s job at the bank and, although the issue is not with the Ethics Commission, the question is what has happened around this. Commissioner Adler believed this bill is a good example of something that looks reactive to that.

Vice Chair Lilly’s understanding was that the question was asked of the former EDLC, who responded. The issue never came before the Commission.

The ALC stated that there was an email from the former EDLC to the requester, confirming what Commissioner Adler stated. The ALC further explained that as the Commission is aware, someone filed a complaint publicly on television on this issue.

The ALC stated that the Ethics Commission responded back to the requester that there was no violation. However; the ALC recalled that the Ethics Commission did say that this may cause staff to look at the financial disclosure laws more carefully. Staff may need to look at vested versus unvested interests, bringing up the question of whether the Ethics Commission needs to be more specific in all the different definitions. For example, how specific should filers be when they disclose stock options. The ALC further explained that it was a question that had not been raised before.

Commissioner Adler asked if it is currently in the Senate, to which the EDLC responded that it is still in the House. The EDLC stated that it is going to Finance Committee tomorrow, February 22nd, and will likely cross to the Senate.

Commissioner Adler stated that he wanted the Commission to continue to follow this bill.

7. Education Opportunities
 - a. Office of Administrative Hearings, State Department of Commerce and Consumer Affairs

The EDLC discussed a new date for Administrative Hearings training – May 23rd. The EDLC stated that training would begin at 1:00 p.m., in the Leiopapa A Kamehameha Building, Room 204. The EDLC stated another email invite would be sent out once the date is confirmed.

Vice Chair Lilly clarified that the date does not fall on the regular Commission meeting to which the EDLC confirmed that it is not. The EDLC added that she believed Executive Director Izumi-Nitao is trying to schedule training as part of the Campaign Spending Commission's regular meeting.

The EDLC stated that she would contact Commissioners Monk and Kanda for the crisis management discussion. Still to be scheduled is the training by the Campaign Spending Commission staff.

8. Integrity Hotline for City and County of Honolulu Employees – None

At 12:22 p.m. Commissioner Adler made and Commissioner Monk seconded a motion to move from Open Session into Executive Session. The motion carried unanimously.

III. Executive Session (The following agenda items will be reviewed in executive session pursuant to Section 92-5(a)(2), Hawaii Revised Statutes (HRS), to consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of the matters affecting privacy will be involved; Section 92-5(a)(4), HRS, to consult with the Commission's attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities; or HRS Section 92-5(a)(8) to deliberate or make a decision upon a matter that requires consideration of information that must be kept confidential pursuant to state or federal law or court order.)

C. For Discussion: Procedural Issues Relating to Reconsideration of Staff's Preliminary Determination of April 19, 2017 Ethics Commission Meeting Agenda Item III.A.: Whether Officer Knew or Should Have Known That Officer's Alleged Partisan Advocacy for Charter Amendment on the November 8, 2016, Ballot Violated RCH Section 11-104

E. For Action: Request for a Motion to Approve and Adopt Staff's Draft Advisory Opinion No. 2018-1 Regarding Alleged Violation of RCH Sec. 11-104 Against a City Employee

At 12:38 p.m. Commissioner Lilly made and Commissioner Adler seconded a

motion to go out of executive session to return to open session. The motion carried unanimously.

Chair Marks reported that for Item III.C., with the updated information provided to the Commission, the Commission asked the ALC to notify the complainant of the decision regarding appropriate action. Item III.E. was deferred.

IV. For Discussion: Strategic Planning

Referring to the draft in the materials, the EDLC stated that the only change was to page 10, which included accomplishments for fiscal year 2017 and language regarding actions to be continued, completed, or started in fiscal year 2018.

Vice Chair Lilly discussed including language regarding the origins of ethics.

According to Vice Chair Lilly, “ethics” was coined by Aristotle 2300 years ago. If one were to read ‘Ethics,’ it goes through all of the virtues of a virtuous life and describes what is a virtue. For example, being compassionate, having courage, and not just courage in combat, but courage in all walks of life, whenever you are challenged. Being too profligate is not being virtuous; being generous is a virtue. Aristotle defines a virtuous life in a way that, when read, is simple and so clear that it is self-evident. Aristotle says these are truths that we all know intuitively as people; that they are within us, as humans. Everything Aristotle says is what you want to be. Vice Chair Lilly explained that it’s amazing that ethical rules among professionals, such as lawyers, or ethics among Certified Public Accountants (CPAs), or just ethical rules for public employees, all find their genesis in the work 2300 years ago.

Vice Chair Lilly stated that there would be no ethical violations if everyone followed this path and that many of the ethics transgressions that we see are not necessarily something that you would not know unless you read the law; rather, you would just know intuitively that there are certain things you should not do.

Vice Chair Lilly thought it would be worthwhile to point out that we derive our ethics principles from the book by Aristotle that was written 2300 years ago and encompasses all there is about an ethical life, or what he calls a virtue; a virtuous life. Vice Chair Lilly believes it has value.

Chair Marks also believes what Vice Chair Lilly stated does have value and what Aristotle said also does have value. At the risk of making something too simple, Chair Marks asked whether there was any way the quotes could be made into a tweet. The EDLC, ALC and Commissioners expressed enthusiasm for Vice Chair Lilly’s point of view and that the beauty of ethics is that it can be opened up anywhere.

Vice Chair Lilly further explained that with courage, it is in all walks of life and explained that is the “virtuous courage.” The antithesis, or too much courage, however is

rashness. Vice Chair Lilly stated that going out there to be the “bull in the china shop” and do something rash, that is not courage.

Chair Marks informed Vice Chair Lilly that if he finds anything suitable to tweet, he should share it with staff.

Vice Chair Lilly summarized that Aristotle says there are four kinds of people; the first type is “pure evil” and it is a very rare thing. The second kind of person is someone who knows what the right path is, but cannot help themselves, and goes down the bad path. Vice Chair Lilly explained the third kind of person, as “us,” stating that we are challenged every single day with all of these bad paths; however, we choose the proper, virtuous path.

Vice Chair Lilly described the last person as a “totally virtuous person,” as about as rare the person who does not recognize the bad path and only recognizes the virtuous path. For example, Billy Graham, Dalai Lama, or Mother Theresa; those of whom always go down the right path.

The EDLC stated that her only concern is that the Ethics Commission strategic plan is based upon the City’s Standards of Conduct and not upon the larger theory of ethics.

Commissioner Adler suggested tweeting or sending out dialogues. Chair Marks added that it could be like a “quote of the day,” only the quote could be from Aristotle.

The EDLC explained that the staff receives so many complaints where the Complainant states that an action is “wrong” and that the Ethics Commission should be “going after them because it’s wrong/unethical.” The staff then has to identify violations based on the City Standards of Conduct; everything else is not within their jurisdiction.

The ALC stated that earlier this month, she and the EDLC met with Chief Ballard and her two deputies and legal counsel to talk about HPD’s ethics programs and what the Ethics Commission does. After the meeting, the ALC followed up with Deputy Chief Grems, who is in charge of the administrative side. The ALC was invited to the training academy in Waipahu, to observe how HPD conducts its group ethics training. The ALC stated that HPD spends four (4) hours on ethics for their recruit trainings, which is on morals and the “six pillars” of character. The ALC stated she will observe the training in April, to which Chair Marks agreed that it was a good idea.

The ALC stated that she was more concerned about their retraining. The ALC wants to work with HPD employees on retraining the laws, too.

The EDLC stated that the Ethics Commission’s goal is to have HPD take the online training.

The ALC stated that Vice Chair Lilly’s idea is a good one, and can be used, as long as it can be melded. The lieutenant told the ALC that the recruits would be shown newspaper articles,

in order to get them to think about not wanting to be that officer and to encourage the recruit to try to do the right thing.

The EDLC shared Commissioner Amano's feedback, that she loves what Vice Chair Lilly sent. Commissioner Monk added that it may be a pitfall to put this at the top of one of the defining documents. It may possibly open public expectations of what we can and cannot uphold and enforce. This may be higher than we can meet, given the Ethics Commission's actual mandate. The EDLC agreed and stated that the Ethics Commission cannot be the "morality police." The Commissioners expressed agreement and the ALC added that a lot of complaints simply state that "it's just unethical, you have to do something about it/investigate."

Vice Chair Lilly agreed, stating that his idea was more of a "roadmap." Chair Marks concluded that the Commissioners and staff all liked Vice Chair Lilly's "Aristotle Ethics," with the idea of quote-of-the-day or tweet, to which Vice Chair Lilly stated he could send the ALC some excerpts.

Commissioner Adler agreed, stating that this strategic plan is more of an administrative document. On the other hand, Commissioner Adler expressed that he liked and believes Vice Chair Lilly's idea is really helpful and useful for the Commission.

A. Exposure Draft (dated January 17, 2018)

In regard to draft D5, Chair Marks asked for feedback or typos. Commissioner Monk stated that it looks good.

Commissioner Adler stated that the one thing he would like, and noted that it would not have to be in the draft, was something "short term," which he defined as a description of what will be done in the next 100 days. Commissioner Adler reiterated that it did not have to be in the draft, since it would be outdated in the next 100 days. However, Commissioner Adler felt it was important to have a short-term work plan.

Commissioner Adler referred to Section VIII on priority objectives, which are more long term than short term. Commissioner Adler referred to the chart, which lays out synchronizing charter ordinance, rules, procedures, Standard Operating Procedures (SOP), training and education, which strike him as the big long-term things that need to be done. The question Commissioner Adler posed is what would be done in 2018.

Chair Marks summarizing that Commissioner Adler was focused on short-term goals versus long-term goals.

Chair Marks stated that for the next meeting, the EDLC could talk about "next steps" which could be what needs to be done short term to advance this. Commissioner Adler reasoned that this is where the Commission gets started.

Chair Marks stated an example of a short-term goal is proposing ordinance changes regarding lobbyists.

Chair Marks surmised that there is going to be a lot of “intermediate steps” to get to some of the others, such as the rules. Commissioner Adler stated things would have to be sequenced. Commissioner Adler also stated that he would be happy to help because he believes that these are pivotal to moving the whole Commission forward.

The ALC stated that she would like to spend more of her time doing legal work and helping to draft legislation and rules. The ALC cautioned that the resolution of the cases would slow down.

Chair Marks suggested the ALC get a second year law clerk to help. The EDLC stated she would find out who the appropriate person is.

The EDLC stated that the draft strategic plan would be brought to the next meeting to be finalized.

Chair Marks stated that she believed this was a good exercise.

B. Media Policy (dated July 23, 2015)

At 1:07 p.m., Vice Chair Lilly moved and Commissioner Adler seconded a motion to move from Open Session into Executive Session. The motion carried unanimously.

- III. A. For Discussion: Kealoha vs. Totto, Civil No. 16-1-1166 GWBC in the Circuit Court of the First Circuit, State of Hawai‘i, and Civil No. 1:16-CV-16-00682 JMS-KSC in the United States District Court for the District of Hawai‘i

At 1:13 p.m., Vice Chair Lilly moved and Commissioner Monk seconded a motion to go out of executive session to return to open session. The motion carried unanimously.

Chair Marks reported that the Commission conferred with its attorney.

V. Adjournment

At 1:13 p.m., Vice Chair Lilly moved and Commissioner Monk seconded to adjourn the Ethics Commission meeting. The motion carried unanimously.